

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 04-0189P**

**Withholding Tax**

**For the month December 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late payment of a monthly withholding tax return. The withholding return in question is December 2003.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the penalty be waived as the filing of the withholding tax return was inadvertently late due to the transition of one accounting services provider to another accounting services provider. Furthermore, the taxpayer states the taxpayer has a good compliance record in filing tax returns and this payment record should be a factor in waiving the penalty.

With regard to the payment history, the Department points out that the taxpayer has had several late filings in the past. The Department does not feel the taxpayer has established a good payment history that would be a factor in waiving the penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer’s penalty protest is denied.